Jurisdictional Statement

81-5433

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SUPREME COURT, U.S.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

DANIEL D. TRAVIS, Appellant

v.

STATE OF IOWA, Appellee.

ON APPEAL FROM THE SUPREME COURT OF IOWA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether equal protection is violated by a statutory scheme in which the State may initiate a paternity action under either of two statutes which are functionally equivalent except that one provides for right to trial by jury and one does not.

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OPINIONS BELOW

The opinion of the Supreme Court of Iowa, which appears in Appendix A hereto, pp. 1-8, infra, is reported at 306 N.W.2d 733 (Iowa 1981). The order of the District Court for the Seventh Judicial District of Iowa denying jury trial is not reported. The text of that order is set forth in Appendix B hereto, p. 9, infra.

STATEMENT OF THE GROUNDS

A. Nature of the Proceedings

This action was commenced on February 13, 1980, by the filing of a Petition to Establish Paternity in the District Court for the Seventh Judicial District of Iowa. That petition alleged Appellant, Daniel D. Travis, to be the father of minor child Matthew Bishop, and asked that court to enter an order naming Appellant as the father and ordering him to pay support. Appellant denied paternity, and demanded a trial by jury, stating that his federal and state constitutional rights to equal protection afforded him a right to trial by jury. The district court entered an order on April 28, 1980 which denied Appellant's jury demand. The Iowa Supreme Court by interlocutory order affirmed the denial on June 17, 1981. Appellant filed his notice of appeal to the Supreme Court of the United States with the Supreme Court of Iowa on August 17, 1981.

B. Jurisdiction of the Appeal

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(b). The criteria for jurisdiction is met by the Iowa Supreme Court's final decision to uphold

the validity of the Iowa statutory scheme against constitutional challenge. Although the decision resulted from an interlocutory appeal, the Iowa Supreme Court's decision is a "final judgment or decree" for purposes of 28 U.S.C. §1257 and consequently is ripe for Supreme Court review.

Appellate jurisdiction is conferred on this Court with respect to state litigation when the highest court in which judgment could be rendered has entered a "final judgment or decree". The requirement of finality, however, does not require the state court to have issued "the last order possible to be made in a case." Gillespie v. U.S. Steel, 379 U.S. 148, 152 (1964). This Court has found the requirement of finality has been met in situations in which the highest court of a state has finally determined the federal issue presented, but further proceedings in lower state courts remain. Cox v. Cohn, 420 U.S. 469 (1975).[1]

In a case analygous to the one at bar, this Court determined that a question of venue was "final" and could be reviewed before a final decision on the merits was reached. Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963). Even though the party contesting venue might have prevailed on the merits in the state court trial, this Court found finality and thus jurisdiction, stating that the question of venue:

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[1] Cox lists four categories of cases in which there is considered to be final judgment for purposes of 28 U.S.C. §1257 even though further State court proceedings remain. Cox relies on Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963), discussed infra, as being the exemplar for the fourth of these categories. Cox, 420 U.S. at 483. Subsequent to Cox, the Supreme Court reaffirmed its holding and accepted for decision another case regarding venue. American Motorist v. Starnes, 425 U.S. 637 (1976).

> is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action. Moreover, we believe that it serves the policy underlying the requirement of finality in 28 U.S.C. §1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until conclusion of the proceedings.

371 U.S. at 558. As in Langdeau, the federal question in this case of right to trial by jury is totally unrelated to the merits of Appellant's claim that he is not the father of the child in question. Resolution of the venue in Langdeau does not preclude state litigation, but merely determines the proper forum for that litigation. A determination of whether the trial takes place before a judge or a jury is essentially a question of proper forum. As a result, the rationale and decision of the Court in Langdeau is controlling.

The effect of determining the question of forum at this stage of the proceedings instead of after a full trial to a judge would be to avoid subjecting parties to needless, time consuming and costly litigation. In fact, it is even more important in this case, where family interests are involved, than in Langdeau, where monetary relief was sought, that the federal question be resolved before completion of the state court proceedings. The expeditious resolution of this issue is essential because of the family relationship to be created and the potential irreparable harm to all parties if a second trial is required. See Matthews v. Eldridge, 424 U.S. 319, 331, n.11 (1976). This Court has stressed the importance of familial bonds, finding a parent's right to raise, care for, nourish and educate his children is a right "far more precious. . . than property

rights." May v. Anderson, 345 U.S. 528, 533 (1953). See also Stanley v. Illinois, 405 U.S. 645 (1972). The rights involved in an attempted imposition of a family relationship through a paternity proceeding also rise to this level. Little v. Streater, 49 U.S.L.W. 4581 (June 1, 1981). Were state proceedings to go forward without resolving Appellant's right to jury trial, it is forseeable that paternity would be established without the benefit of a jury trial. A family relationship would be imposed upon the Appellant and the child. Appeal could then result in a vacation of the finding of paternity and remand for a jury trial, where the jury could find that Appellant was not the father. This Court should not risk subjecting the persons involved to such uncertainty where important familial interests are involved.

In addition to the substantial injury to the persons involved, failure to take jurisdiction at this time would contravene an important policy consideration underlying 28 U.S.C. §1257, i.e. to minimize federal intrusion in state affairs. North Dakota Pharmacy v. Snyder's Stores, 414 U.S. 156, 159 (1973). This Court can decide now whether Appellant has a right to trial by jury. If it chooses to delay decision, it would allow the State to proceed, perhaps establishing a family unit, only to have this Court intervene later and vacate the State's finding. The option of immediate resolution of the right to jury trial issues involves less intrusion than does a later federal ruling voiding the state's establishment of a family unit.

The several factors discussed above compel this Court to consider the Iowa Supreme Court decision as final for purposed of 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution, Amendment XIV, §1:

> . . . nor shall any state. . . deny to any person within its jurisdiction the equal protection of the laws.

Iowa Code Chapter 252A, Uniform Support of Dependent's Law (printed in its entirety in Appendix D pp. 12-23).

Iowa Code Chapter 675, Paternity of Children and Obligation of Parents Thereto, (printed in its entirety in Appendix E pp. 24-32).

THE QUESTION PRESENTED IS SUBSTANTIAL

By establishing two overlapping paternity statutes, only one of which permits jury trials, the State of Iowa has created a system whereby the county attorney can arbitrarily prosecute a putative father under Chapter 252A rather than Chapter 675 and thereby deprive him of the right to a jury trial guaranteed under Chapter 675. This inequality, unrelated to any legitimate purpose of the statute, violates Appellant's right to equal protection of the laws. In particular the arbitrary denial of this right in paternity proceedings has an adverse impact on the structure of family relationships and results in the deprivation of a substantial right.

A. The Statutory Scheme

In Iowa, two chapters establish the statutory basis for an action to adjudicate paternity and compel necessary support for a child. Chapter 675, Iowa Code, had long been the sole means for determining paternity and support. In 1950, however, Iowa adopted the 1948 draft of the Uniform Support of Dependents Law at Chapter 252A of the Iowa Code. The Uniform Law was intended to assist in the collection of support in situations where parties involved were located in different states. See Iowa Code §§252A.1 and 252A.4. The statutory language of Chapter 252A was unclear on whether that chapter could be used in situations where all persons involved lived in Iowa. In Davis v. Davis, 246 Iowa 262, 266, 67 N.W.2d 566, 571 (1955), the Iowa Supreme Court decided that Chapter 252A could be used in all such intrastate cases. It was also unclear whether paternity could be established under 252A, or if 252A was to be used only after paternity had been established. In Greenstreet v. Clark, 239 N.W.2d 143 (Iowa 1976), the Supreme Court resolved this doubt by holding that the issue of paternity can be decided as part of a Chapter 252A proceeding. As a result of the decisions in Davis and Greenstreet, Chapter 252A and Chapter 675 are now functional equivalents, permitting paternity and support actions in intrastate cases.

On one point, however, the statutes are different: Chapter 675 provides the right to a jury trial, while Chapter 252A does not. This difference is not supported

by the few differences between the statutes[2] and cannot be justified in this case where the action could have been brought under either statute.

B. Denial of Equal Protection

The dual statutory scheme creates two classes of putative fathers: one prosecuted under Chapter 252A and the other under Chapter 675. These two classes are composed of similarly situated persons who are treated differently in that the class of putative fathers prosecuted under 252A is denied the opportunity to obtain a jury trial on the issue of paternity. This dissimilarity between the classes cannot be justified.

At a minimum, the Equal Protection clause of the Fourteenth Amendment to the United States Constitution requires that a classification must be "rationally related to a legitimate governmental interest." U.S. Department of Agriculture v. Moreno, 413 U.S. 528, 533 (1973).[3]

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[2]The primary differences between these statutes relates to their scope: Chapter 675 is limited to intrastate parental support actions, while Chapter 252A covers not only the actions permitted by Chapter 675 but also intrastate actions and those involving spousal and other dependent support actions. In addition, Chapter 675 has a two year statute of limitations, but Chapter 252A does not. These differences, however, do not effect the functional equilvalency of these statutes as applied to the Appellant in this case and any other respondent in an intrastate proceeding under Chapter 252A.

[3]In order to invoke the protections of the Fourteenth Amendment, state action must be present. In analyzing a similar paternity statute this Court recently held that "'State action' has undeniably pervaded this case." Little v. Streater, 49 U.S.L.W. 4581, 4584 (June 1, 1981). State action in this case is likewise pervasive. The statutory scheme is established by the legislature. The action was brought by the County Attorney pursuant to statute to recover the amount spent by the State in paying welfare benefits to the child. Iowa Code §252A.5(5). The mother must assist in the prosecution or be subject to loss of public assistance. Iowa Code §239.5. Contempt actions can be brought to require compliance with any support order. Iowa Code §252A.6 (13). As in Little, these pervasive factors establish state action.

Appellant will show that the challenged statutory scheme cannot satisfy this least vigorous "rational basis" standard. The appropriate test, however, is the more stringent review required by the intermediate test which this Court applied in cases involving family rights and gender based classifications. Lalli v. Lalli, 439 U.S. 259 (1978), Kirchberg v. Feenstra, 49 U.S.L.W. 4270 (March 23, 1981). An action establishing paternity creates interests of importance equal to those in Lalli and Kirchberg.

In suing Appellant, the State seeks to create numerous substantial and important relationships. In its most recent decision regarding paternity actions, Little v. Streater, 49 U.S.L.W. 4581 (June 1, 1981), this Court recognized the fundamental importance of these relationships:

> The private interests implicated here are substantial. Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. See Stanley v. Illinois, 405 U.S. 645, 651-652 (1972).

49 U.S.L.W. at 4585. The importance of the interests involved warrants a heightened level of judicial scrutiny.

Because of the interests recognized by this Court in Little, the procedure by which paternity actions are adjudicated is particularly important.

> Just as the termination of such bonds demands procedural fairness, see Lassiter v. Department of Social Services, 49 U.S.L.W. 4586 (June 1, 1981), so too does their imposition. Through the judicial process, the State properly endeavors to identify the father of a child born out of wedlock and to make him responsible for the child's maintenance. Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination.

49 U.S.L.W. at 4585. (Footnote omitted). The right to a jury trial in a Chapter 252A proceeding is essential to the procedural fairness of such a hearing. The jury provides to a putative father the benefit of the common-sense judgment of the community as a hedge against an overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned response of a judge. See Taylor v. Louisiana, 419 U.S. 522 (1975). This right has been taken beyond Appellant's reach by the State's action in filing an action under Chapter 252A instead of Chapter 675. In effect, petitioners in paternity cases have a right to a jury trial, but can deny to respondents the same right by pursuing their case under Chapter 252A. Surely a statute granting the right of jury trial to petitioners but denying it to respondent's could not withstand judicial scrutiny. Yet that is essentially what the Iowa statutory scheme permits.

Because of the importance of these rights, this Court must find that the denial of a jury trial right to persons prosecuted under 252A is "substantially related" to a governmental objective in order to uphold the existing statutory scheme. Kirchberg v. Feenstra, supra. Trimble v. Gordon, 430 U.S. 762 (1977). None of the interests advanced by the Iowa Supreme Court or the State can justify the denial of a right to a jury trial. Even if the Court

employs a rational basis test, this arbitrary discrimination must fall.

The interests cited by the State in their brief before the Iowa Supreme Court[4] are primarily economic, i.e., reducing taxes by compelling support of a dependent child receiving public assistance. Chapter 675 has a similar purpose. In Chapter 675, however, the State argues that the purpose of the chapter is advanced by a jury trial, while under Chapter 252A, the purpose of the statute is allegedly hampered. The reason for this difference is unclear. In its decision the Iowa Supreme Court relies on the administrative difficulties involved in conducting interstate cases. As the dissent below aptly noted, however, the facts in this case dictate that the comparison must be between Chapter 675 case and intrastate cases under Chapter 252A. App. A. pp. 7-8. Except for alluding to the potential, and perhaps illusory, difficulties in implementing a jury trial in an interstate case[5], the Iowa Supreme Court suggested no justification for denying a jury trial right.

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[4]On page 6 of the appellee's brief, the State sets forth the "significant and legitimate interests" effected by Chapter 252A: (1) To compel the support of a dependent child within the state. . .; (2) to reduce the taxes of the populace; (3) to reduce the welfare roles of the State; (4) to prevent spurious probate claims; and (5) to provide uniformity of law with and among the states.

[5]In evaluating a similar set of paternity statutes wherein jury trials were only provided in one of the statutes, the Oregon Supreme Court required jury trials in all cases brought under the Uniform Law (comparable to 252A) and appeared to consider a jury trial as a necessary and feasible option for all cases, whether interstate or intrastate. Clarkston v. Bridge, 539P.2d 1094 (Ore. 1975).

The other apparent purposes served by the statute would not seem to be hindered by a jury trial. The intent to secure support for dependents is evident in both statutes. Iowa Code §§252A.1 and 675.1. The need for promptness in establishing paternity would seem to be no greater under Chapter 252A than under Chapter 675. As this Court stated in Little, the need for accuracy would seem to be important under both statutes. As a result, the State can show no rational relationship between the challenged statutory scheme and any legitimate purpose.

The problems created by this dual system in which an important right is included in one statute but omitted in the other have in the past been addressed by this and other courts. When an individual loses important procedural protections by an arbitrary decision of the state to prosecute under one act rather than another, the courts have been extremely sensitive to equal protection concerns. In Humphrey v. Cady, 405 U.S. 504 (1972) the Court stated:

> . . . The equal protection claim would seem to be especially pervasive if it develops on remand that petitioner was deprived a jury determination, or of other procedural protections, merely by the arbitrary decision of the State to seek his commitment under one statute rather than the other.

405 U.S. at 512. Whenever possible the courts have sought to resolve this problem of unequal rights by statutory construction, reading the omitted rights into the offending statute. See Cuyler v. Adams, 49 U.S. L.W. 4105 (Jan. 21, 1981) (construing procedural protections of Uniform Criminal Extradition Law as required by Interstate Compact on Detainers); Clarkston v. Bridge, 539 P.2d 1094 (Ore. 1975) (construing right of jury trial found in original paternity statutes to be required in proceeding

under Uniform Reciprocal Enforcement of Support Act). When this has not been done, courts have found statutes which establish dual systems that confer and deny certain procedural or substantive protections on the arbitrary election of the state to be violative of equal protection. Baxtrom v. Harold, 383 U.S. 107 (1966) (equal protection was violated by dual system in which person could be civilly committed under either of two statutes, only one of which provided trial by jury); Humphrey v. Cady, supra, (Supreme Court reversed and remanded case because of substantial question presented by Baxtrom-type equal protection violation); State ex rel Garner v. Gray, 55 Wis.2d 574, 201 N.W.2d 163 (1972) (equal protection violated by arbitrary denial of procedural protections in Interstate Compact on Detainer Act to persons being sought under Uniform Criminal Extradition Law.) In either situation, the end result has been the extension of the missing protection to all persons similarly situated. The Iowa Supreme Court has been afforded the opportunity to construe the statutes so as to avoid the constitutional issue, but has failed to do so. In order to enforce the Constitutional mandate of affording equal rights to similarly situated persons, this Court must invalidate the challenged statutory scheme.

Conclusion

For these foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, ex rel CANDY S. BISHOP, Appellee, vs. DANIEL D. TRAVIS, Appellant.	)	Filed June 17, 1981 94 65084

Appeal from Scott District Court, L.D. Cartsenson, Judge.

Challenge to denial of respondent's demand for jury on paternity issue in proceeding under uniform support of dependents law. AFFIRMED.

Bob Heimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, John R. Martin, Assistant Attorney General, William E. Davis, Scott County Attorney, and Gregory S. Jager, Assistant Scott County Attorney, for appellee.

Considered en banc.

HARRIS, J.

Respondent believes a jury, not the court, should determine whether he is the father of petitioner's child. Two methods to establish paternity are provided by alternative Iowa statutes. Traditional actions have long been provided by what is now chapter 675, The Code 1981. Under section 675.18, either party can demand a jury trial, a right in existence since the 1851 Code. Paternity can now also be established as an adjunct to a proceeding under chapter 252A, The Code (uniform support of dependents law). Greenstreet v. Clark, 239 N.W.2d 143, 147 (Iowa 1976). But where a proceeding to establish paternity is brought under chapter 252A, there is no right to a jury. Id. at 148. This appeal turns on whether the denial of the right under one chapter, when contrasted with the right granted under the other chapter, is a denial of equal protection of the laws. The trial court thought not and we agree.

The State, in behalf of the petitioner Candy Bishop, brought this action under chapter 252A to compel support of Candy's child. The petition specifically asks that the court find respondent to be the father of petitioner's child. Respondent answered, denying all relevant allegations and also filed a demand for a jury trial to determine the question of paternity. Petitioner resisted the demand, stating that no right to a jury trial existed in a 252A proceeding under our holding in Greenstreet. Replying, the respondent alleged that the denial violated his right to equal protection of the laws. The question was submitted to the trial court which entered an order denying the jury demand. On respondent's application we

granted permission to bring this interlocutory appeal.

I. A right to a jury trial, if it arises only by virtue of statute, is not fundamental. The first question then is whether a right to a jury trial on a particular controversy existed at common law. Iowa National and Mutual Insurance Co. et al v. Mitchell, N.W.2d , (1981). Paternity proceedings are entirely statutory. 10 C.J.S. Bastards §32 p. 144. We have never considered our statute to be criminal in nature. Holmes v. The State, 2 G. Greene 501 (1850). We therefore believe the rational basis test, not strict scrutiny, should be applied. It is not, as respondent suggests, a question involving a fundamental right of family.

We have often quoted the following as a standard for the rational basis test:

> Plaintiffs have assumed a heavy burden as the following propositions are well established. Ordinarily, statutes, with notable exceptions not here involved, regularly enacted by the legislature will be accorded a strong presumption of constitutionality and all reasonable intendments must be indulged in favor of the validity of the legislation attacked. One who challenges legislation on constitutional grounds has the burden to negate every reasonable basis upon which the statute may be sustained. Where the constitutionality of a statute is merely doubtful or fairly debatable, the courts will not interfere. Thus a statute will not be declared unconstitutional unless it clearly, palpably and without doubt, infringes the constitution. [Authorities.] The legislature is given wide discretion in defining the limits of classes when a statute involves classification of persons or things. If a classification is reasonable and operates equally upon all within the class, it is a valid classification. [Authority.]

Keasling v. Thompson, 217 N.W.2d 687, 689 (Iowa 1974). In City of Waterloo v. Seldon, 251 N.W.2d 506, 508 (Iowa 1977) we said:

> All presumptions are in favor of the constitutionality of the statute and it will not be held invalid unless it is clear, plain and palpable that such decision is required. The legislature may pass any kind of legislation it sees fit so long as it does not infringe the state or federal constitutions. Courts do not pass on the policy, wisdom, advisability or justice of a statute. The remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive is with the legislature. The burden is not upon defendant Seldon and intervenor state appeal board to prove the act is constitutional. Plaintiffs have the burden to demonstrate beyond a reasonable doubt the act violates the constitutional provision invoked and to point out with particularity the details of the alleged invalidity. To sustain this burden plaintiffs must negative every reasonable basis which may support the statute. [Authority] Every reasonable doubt is resolved in favor of constitutionality. [Authority]

The two chapters, 252A and 675, cover the same ground only in part. While economic necessities of children perhaps provide most of the impetus for actions under either chapter, there is a difference in their immediate aims. The essential function of the older chapter, 675, is to establish a parent-child relationship. The chapter served to enforce support for no other relationship, such as for husband and wife. The older chapter suffered another shortcoming in our increasingly mobile society. It could not effectively reach across the state lines.

> The act states that its purposes are to improve and extend by reciprocal legislation the enforcement of the duties of support and to make uniform the law with respect thereto . . . . [T]he purpose of the act . . . is to compel performance by one under duty to support dependents in another state, and not primarily to subject him to criminal punishment for a past offense. The act is designed to enable a dependent in one state to initiate proceedings in the state of his domicil for the purpose of securing money for support from a person residing in another state who is legally liable for the support of such dependent.

23 Am Jur 2d, Desertion and Nonsupport, §128, p. 1002.

We recently pointed out the mechanics of the proceeding under

chapter 252A in another context in State of Colo., Etc. v. Brammer, 301 N.W.2d 715 (Iowa 1981).

There are specific differences between the two chapters which, while perhaps not controlling, indicate that they have differing ranges. For example chapter 675 obligates only mothers and fathers; chapter 252A obligates others as well, such as spouses, grandparents and grandchildren.

Seen in this light, the State can claim a legitimate interest in providing a nonjury proceeding in a chapter 252A action. As explained in Brammer the system under the chapter presupposes the sending back to the initiating state the information gathered in the responding state. There is a provision whereby the initiating state can in turn gather further evidence to be forwarded to and considered by the court in the responding state. It becomes much more difficult to present the question to a jury under such a procedure.

In refusing to provide a jury under the uniform act the legislature might well have had an eye on section 252A.13 under which public funds become involved by way of assignment for public support. The need for the public to have an efficient collection system to reimburse for public funds expended takes on considerable significance as those obligated move from one state to another.

Of course this proceeding, like many brought under chapter 252A, is not interstate. Iowa could have elected to enforce

support under the old chapter, thus according respondent a right to a jury. But we think the legislature had the right to provide a nonjury system available for both interstate and intrastate actions. The theory of chapter 252A is that needs should be met promptly for dependents - where they are- and should be enforced against those obligated - wherever they might be found.

We believe the legislature acted within its authority, under the rational basis test, in concluding that a jury trial might be allowed for a traditional paternity action and yet denied for a paternity question in a proceeding under chapter 252A.

AFFIRMED.

All justices concur except McCormick, J., and Allbee, J., who dissent.

McCORMICK, J., (dissenting).

It was not necessary for respondent to establish that the denial of a right to jury trial under chapter 252A violates equal protection in every situation in which the statute might be applied. It was sufficient for him to demonstrate that the refusal of a jury trial infringed equal protection as the statute was applied to him. Because I believe respondent met his burden, I would hold that the trial court erred in overruling his request for jury trial.

The State concedes it had two alternative remedies in seeking adjudication of the paternity and support issues. It has standing to pursue these remedies even if the child has not received public assistance. See §§ 252A.6, 675.19, The Code. It also has standing under each chapter when public assistance has been provided. See §§ 252A.5(5), .13, 675.8. The only difference in the mechanism for adjudication when the parties reside in Iowa is that no right to jury trial is recognized when the action is brought under chapter 252A.

For this discrimination to be justified, it must be rationally related to some difference in the legitimate objectives of the statutes. Baxstrom v. Herold, 383 U.S. 107, 111, 86 S. Ct. 760, 763, 15 L. Ed. 2d 620, 624 (1966) ("Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made."); Brightman v. Civil Service Commission, 204 N.W. 2d 588, 591 (Iowa 1973)("The constitutional equal protection safeguard requires that the line drawn be a rational one. . .")

The discrimination in intrastate cases is not rationally related to objectives of chapter 252A in interstate cases. No procedural difference exists between intrastate actions under

chapters 252A and 675 except that the right to jury trial is not provided in chapter 252A. When an intrastate action is brought to obtain support for a dependent child, as in the present case, no ground exists for differentiating between the legislature's objectives in the two statutes. The minor substantive differences affecting the support award have no rational connection to the presence or absence of a jury.

I would hold that a respondent in an intrastate chapter 252A case has a right to jury trial when he would have that right if the same action were brought under chapter 675. Denial of the right infringes his right to equal protection under U.S. Const. amend. XIV and Iowa Const. art. I, § 6.

If the legislature deems jury trials to be inconvenient or inefficient in paternity cases, it has the prerogative of amending chapter 675 to withdraw the right. This court does not have constitutional authority to nullify the right by permitting jury trials to be denied in identical actions under chapter 252A.

Allbee, J., joins this dissent.

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

Filed April 29, 1980

STATE OF IOWA, EX REL CANDY S. BISHOP,	)	
PETITIONER,	)	ORDER
VS.	)	COURT NO. 19-9001
DANIEL D. TRAVIS,	)	
RESPONDENT.	)	

NOW ON April 28, 1980 it being regular motion day, there comes before the court [with] oral argument, pursuant to Iowa Rule of Civil Procedure 117 and Rule 2.3, Seventh Judicial District Rules of Practice and Administration:

Plaintiff's resistance to jury demand, which resistance was filed March 25, 1980.

This is a paternity and support action brought under Chapter 252A, Iowa Code. Defendant filed timely demand for jury. Plaintiff urges that defendant not entitled to jury trial under doctrine of the case of Greenstreet v. Clark, 239 N.W. 2d 143 (Iowa 1976). Defendant urges that denial of jury trial denies equal protection of the laws. I find that the Greenstreet case is controlling.

IT IS ORDERED, ADJUDGED AND DECREED that defendants demand for trial by jury is denied.

The Clerk shall mail or deliver a copy of this order as provided by Rule of Civil Procedure 170.

L.D. Carstensen
JUDGE OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IOWA

APPENDIX C

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, ex rel CANDY S. BISHOP,	)	
Appellee,	)	No. 65084
vs.	)	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
DANIEL D. TRAVIS,	)	
Appellant.	)	

Notice is hereby given that Daniel D. Travis, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Iowa, denying Appellant's demand for jury trial on a paternity issue in a proceeding under the Uniform Support of Dependents Law entered in this action on June 17, 1981.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Dated: August 14, 1981

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Attorneys for Appellant

PROOF OF SERVICE

I hereby certify that on the 21st day of August, 1981, the attached Notice of Appeal was served by depositing it in a United States mailbox with first-class postage prepaid, addressed to counsel of record in this case as follows:

John R. Martin
Assistant Attorney General
Thomas J. Miller
Attorney General of Iowa
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Christine M. Luzzie

CHAPTER 252A
UNIFORM SUPPORT OF DEPENDENTS LAW

252A.1 Title and purpose.

This chapter may be cited and referred to as the "Uniform Support of Dependents Law."

The purpose of this uniform chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support.

252A.2 Definitions.

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. "State" shall mean and include any state, territory or possession of the United States and the District of Columbia.

2. "Court" shall mean and include any court by whatever name known, in any state having reciprocal law or laws substantially similar to this chapter upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

3. "Child" includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain himself and is likely to become a public charge.

4. "Dependent" shall mean and include a spouse, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

5. "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

6. "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

7. "Petitioner's representative" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this chapter or under the laws of the state or states wherein the petitioner and the respondent reside.

8. "Summons" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this chapter.

9. "Initiating state" shall mean the state of domicile or residence of the petitioner.

10. "Responding state" shall mean the state wherein the respondent resides or is domiciled or found.

252A.3 Spouse liable for support. For the purpose of this chapter:

1. A spouse in one state is hereby declared to be liable for the support of his wife or her husband and any child or children under eighteen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

2. A parent in one state is hereby declared to be liable for the support of his or her child or children under eighteen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the father or mother of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if the liable parent is possessed of sufficient means or able to earn such means, he or she may be required to pay for the support of such child or children a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

3. The parents in one state are hereby declared to be severely liable for the support of a dependent child eighteen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain himself and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as her husband or his wife by a person by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce

or separation from his wife or her husband or a decree dissolving his or her marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the natural father shall not be enforceable unless he has been adjudicated to be the child's father by a court of competent jurisdiction, or he has acknowledged paternity of the child in open court or by written statement.

252A.4 Jurisdiction. For the purposes of this chapter:

1. The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

2. The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

3. The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition

or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

252A.5 When proceeding may be maintained. A proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in the same state.

2. Where the peitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

3. Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

4. Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this chapter and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

5. Whenever the state or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be vertified by any official having knowledge of such expenditures and

consent of the dependent shall not be required in order to institute proceedings under this chapter.

252A.6 How commenced-trial.

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the state wherein he or she resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he or she is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his or her person, other names and aliases by which he or she has been or is known, the name of his or her employer, his or her fingerprints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or his or her property, it shall so certify and shall cause three copies of (a) the petition (b) its certificate and (c) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state

has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as in necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the respondent. If a court of the state, acting as a responding state, is unable to obtain jursidiction of the respondent or his or her property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or his or her property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

However, if the court of the responding state is unable to obtain jurisdiction because the respondent resides in or is domiciled or found in another county of the responding state, the papers received from the court of the initiating state may be forwarded by the court of the responding state which received the papers to the court of the county in the responding state in which the respondent resides or is domiciled or found, and the court of the initiating state shall be notified of the transfer. The court of the county where the respondent resides

or is domiciled or found shall acknowledge receipt of the papers to both the court of the initiating state and the court of the responding state which forwarded them, and shall take full jurisdiction of the proceedings with the same powers as if it had received the papers directly from the court of the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but is shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a vertified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or

written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, he or she shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof, or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. An exemplified copy of such order shall be transmitted by the court to the court in the initiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the

payment of the amount required to be paid by the respondent for the support of the petitioner.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of his or her probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court

of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

252A.7 Petitioner's representative to appear. It shall be the duty of all petitioner's representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this chapter, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state.

252A.8 Additional remedies. This chapter shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

252A.9 Construction. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

252A.10 Costs advanced. Actual costs incurred in this state incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency unless otherwise ordered by the court. Where the action is brought by an agency of the state or county there shall be no filing fee.

252A.11 Custody of respondent. When the court of this state, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction it may as an initiating state request in its certificate that the court of the responding state obtain the body of the respondent

by appropriate process if that be permissible under the law of the responding state; or, it may as a responding state, obtain the body of the respondent by appropriate process.

252A.12 Exchange lists of courts. The state division of child and family services of the department of social services is hereby designated as the state information agency under this chapter, and it shall be its duty to compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar Act and to maintain a register of such lists received from other states.

252A.13 Welfare recipients-assignment of support payments. Persons entitled to periodic support payments pursuant to an order or judgment entered in a uniform support action pursuant to this chapter, who are also welfare recipients, shall assign their rights to the payments to the department of social services. The clerk of court shall forward support payments received pursuant to section 252A.6 to the department, unless the court has ordered the payments made directly to the department under subsection 12 of that section. The department shall have the right to secure support payments in default through proceedings prescribed in this chapter. The clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when the parties are receiving welfare assistance.

CHAPTER 675

PATERNITY OF CHILDREN AND OBLIGATION OF PARENTS THERETO

675.1 Obligation of parents. The parents of a child born out of wedlock and not legitimized (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses. The father is also liable to pay the expense of the mother's pregnancy and confinement. The obligation of the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock.

675.2 Recovery by mother from father. The mother may recover from the father a reasonable share of the necessary support of the child.

675.3 Limitation on recovery. In the absence of a previous demand in writing (served personally or by certified mail addressed to the father at his last known residence or in the manner provided for service of original notices) not more than two years support furnished prior to the bringing of the action may be recovered.

675.4 Recovery by others than mother. The obligation of the father as hereby provided creates also a cause of action on behalf of the legal representative of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother or by or on behalf of the child or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performance of the obligations imposed upon him.

675.5 Discharge of father's obligation. The obligation of the father other than that under the laws providing for the support of poor relatives is discharged by complying with a

judicial decree for support or with the terms of a judicially approved settlement. The legal adoption of a child into another family discharges the obligation for the period subsequent to the adoption.

675.6 Liability of the father's estate. The obligation of the father, when his paternity has been judicially established in his lifetime, or has been acknowledged by him in writing or by the part performance of his obligations, is enforceable against his estate in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum.

675.7 Proceedings to establish paternity. Proceedings to establish paternity and to compel support by the father may be brought in accordance with the provisions of this chapter. They shall not be exclusive of other proceedings that may be available on principles of law and equity.

675.8 Who may institute proceedings. The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend.

675.9 Time of instituting proceedings. The proceedings may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child.

675.10 Venue. The action shall be by ordinary proceedings entitled in the name of the complainant against the defendant and shall be brought in the district court in the county in which the alleged father is permanently or temporarily resident, or in which the mother or the child resides or is found.

675.11 Nonresident complainant. It is not a bar to the jurisdiction of the court, that the complaining mother or child resides in another state.

675.12 Complaint-where brought. The complaint may be made to the county attorney.

675.13 Form of complaint-verification. The complaint may be made in writing, or oral and in the presence of the complainant reduced to writing by the prosecuting attorney. It shall be vertified by oath or affirmation of the complainant.

675.14 Substance of complaint. The complainant shall charge the person named as defendant with being the father of the child.

675.15 Original notice. An original notice shall be issued as in other civil cases, which notice shall be served as in ordinary actions.

675.16 Lis pendens. From the time of the filing of such complaint, a lien shall be created upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court.

675.17 Writ of attachment. The district court may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized thereunder, and may be revoked at any time by such court on a showing made for a revocation of the same, and on such terms as such court may deem proper in the premises.

675.18 Method of trial. The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases.

675.19 County attorney to prosecute. The county attorney, on being notified of the facts justifying a complaint as provided in this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant.

675.20 Exclusion of bystanders. Unless objection is raised by either party to the action the judge shall exclude from the hearing all persons except the employees of the court, witnesses, and immediate relatives of the parties involved.

675.21 Death, absence or mental illness of mother-testimony receivable. If after the complaint the mother dies or becomes mentally ill or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. The testimony of the mother taken by deposition as in other civil cases, may in any such case be read as evidence and in all cases shall be read as evidence if demanded by the defendant.

675.22 Death of defendant. In case of the death of the defendant the action may be prosecuted against the personal representative of the deceased with like effects as if he were living, subject as regards the measure of support to the provision of section 675.6.

675.23 Costs payable by county. If the verdict of the jury at the trial or the finding of the court be in favor of the defendant the costs of the action shall be paid by the county.

675.24 Judgment in general. If the findings or verdict be against the defendant, the court shall give judgment against him declaring paternity and for support of the child.

675.25 Form of judgment. The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under section 675.1, as the court directs, until the child reaches the age of eighteen years. The payments may be required to be made at such periods or intervals as the court directs.

675.26 Expenses of confinement. In addition to providing for support, the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child.

675.27 Payment to trustees. The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court.

675.28 Report by trustee. The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over.

675.29 Desertion statute applicable. The provisions of chapter 731*, relating to desertion and abandonment of children, shall have the same force and effect in cases of illegitimacy where paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support, as in cases of children born in wedlock.

* Code 1977, see §726.3 to 726.5, Code 1981

675.30 Agreement or compromise. An agreement or compromise made by the mother or child or by some authorized person on their behalf with the father concerning the support of the child shall be binding upon the mother and child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel

support of the child. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child.

675.31 Continuing jurisdiction. The court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine the custody in accordance with the interests of the child.

675.32 Concurrence of remedies. A criminal prosecution shall not be a bar to, or be barred by, civil proceedings to compel support; but money paid toward the support of the child shall be allowed for and accredited in determining or enforcing any civil liability.

675.33 Limitation of actions. Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support.

675.34 Foreign judgments. The judgment of the court of another state rendered in proceedings to compel support of a child born out of wedlock, and directing payment either of a fixed sum or of sums payable from time to time, may be sued upon in this state and made a domestic judgment so far as not inconsistent with the laws of this state, and the same remedies may thereupon be had upon such judgment as if it had been recovered originally in this state.

675.35 Reference to illegitimacy prohibited. In all records, certificates, or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is

at issue, requiring a declaration by or notice to the mother of a child born out of wedlock, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother and no explicit reference shall be made to illegitimacy, and the term natural shall be deemed equivalent to the term illegitimate when referring to parentage or birth out of wedlock.

675.36 Report to registrar of vital statistics. Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in the same manner.

675.37 Contempt. If the father fails to comply with or violates the terms or conditions of a support order made pursuant to the provisions of this chapter, he shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court in any other suit or proceeding cognizable by such court.

675.38 Welfare recipients-assignment of support payments. Persons entitled to periodic support payments pursuant to an order or judgment entered in a paternity action pursuant to this chapter, who are also welfare recipients, shall assign their rights to the payments to the department of social services. The clerk of court shall forward support payments received pursuant to section 675.25 to the department, which shall have the right to secure support payments in default through proceedings prescribed in chapter 252A or section 675.37. The

clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when the parties are receiving welfare assistance.

675.39 "Child" defined. For the purposes of this chapter, "child" means a person less than eighteen years of age.

675.40 Custody and visitation. The mother of a child born out of wedlock whose paternity has not been acknowledged and who has not been adopted has sole custody of the child unless the court orders otherwise. If a judgment of paternity is entered, the father may petition for rights of visitation or custody in an equity proceeding separate from any action to establish paternity.

675.41 Blood tests. In any proceeding to establish paternity in law or in equity the court may on its own motion, and upon request of a party shall, require the child, mother, and alleged father to submit to blood tests. If a blood test is required, the court shall direct that inherited characteristics, including but not limited to blood types, be determined by appropriate testing procedures, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. Blood test results which show a statistical probability of paternity are admissible and shall be weighed along with other evidence of the alleged father's paternity. If the results of blood tests or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or an independent laboratory at the expense of the party requesting additional testing. Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or the

results of blood analysis has been made before trial. All costs shall be paid by the parties in proportions and at times determine[1] by the court.

Motion to Dismiss or Affirm

Office-Supreme Court, U.S.
FILED
OCT 20 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-5433

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DANIEL D. TRAVIS,
Appellant,

vs.

STATE OF IOWA,
Appellee.

On Appeal from the Supreme Court of Iowa

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Whether an interlocutory ruling by the highest court of a state upholding against an equal protection challenge the denial of a jury trial in civil paternity proceedings, (a) the reversal of which would not terminate the state proceedings and (b) the later review of which would not seriously erode federal policy, is a final judgment or decree within the meaning of 28 U.S.C. § 1257.

2. Whether, in the absence of a claim of unconstitutionality as applied, a statutory scheme which permits a plaintiff in civil paternity proceedings to elect between two remedies, one of which affords a jury trial and one of which affords a trial to the court, but contains no legislative classifications concerning mode of trial subject to facial challenge, presents a substantial question under the Equal Protection Clause of the Fourteenth Amendment.

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No. 81-5433

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DANIEL D. TRAVIS,
Appellant,

vs.

STATE OF IOWA,
Appellee.

On Appeal from the Supreme Court of Iowa

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein on the ground that the appeal is not taken from a "final judgment or decree" within the meaning of 28 U.S.C. § 1257, Rule 16.1(a), and on the ground that the appeal does not present a substantial federal question, Rule 16.1(b). In the alternative, the Appellee moves to affirm the ruling of the Supreme Court of Iowa on the ground that it is manifest that the question on which the cause depends is so insubstantial as not to need further argument, Rule 16.1(c).

NATURE OF THE CASE AND STATE STATUTES INVOLVED

The proceedings below are adequately set forth in the Jurisdictional Statement at 1. The statutes involved, Chapters 252A and 675, Iowa Code 1981, are set forth in full as Appendices D and E to the Jurisdictional Statement. Appellee believes, however, that a brief summary of the evolution and interrelationship of the two statutes may be of assistance to this Court.

The common law recognized no cause of action to recover for the support of illegitimate children. *Engelson* v. *Mallea,* 180 N.W.2d 127, 132 (Iowa 1970). The first statutory remedy in Iowa was enacted as Chapter 52 of the Revised Statutes of 1843. A provision for imprisonment of the father was held unconstitutional in *Holmes* v. *State,* 2 G. Greene 501 (1850), and was deleted by amendment in 1851. The Iowa Legislature repealed the former statute in 1925 and replaced it with the Uniform Illegitimacy Act, 1925 Iowa Acts, 41st G.A., ch. 81, § 1. This Act was created for the purpose of establishing paternity and providing support for illegitimate children, *State ex rel. Bissell* v. *Devore* 281 N.W. 740 (Iowa 1938), and is currently codified as Chapter 675, Iowa Code (1981).

The Uniform Support of Dependents Act, promulgated by the Commissioners on Uniform State Laws in 1948, was adopted by the Iowa Legislature in 1949. 1949 Iowa Acts, 53rd G.A., ch. 103. In 1950, the Commissioners promulgated the Uniform Reciprocal Enforcement of Support Act (URESA). Iowa adopted substantial portions of the Act in 1955, 1955 Iowa Acts, 56th G.A., ch. 129, the purpose of which was to secure by civil proceedings in a court of equity "the support of defendant wives, children and poor relatives within and without the state". *Davis* v. *Davis,* 67 N.W.2d 566, 570 (Iowa 1955). In particular, the act created reciprocal legislation to compel performance by

one under duty to support dependents in another state. *State ex rel. Bishop* v. *Travis,* 306 N.W.2d 733 (Iowa 1981). These two acts are currently codified as Chapter 252A, Iowa Code (1981).

In addition to sharing a common general purpose, the statutory remedies provided by Chapters 252A and 675 also share certain procedural features. Both statutes permit the mother or authorities charged with support of the child to initiate an action, §§ 675.8, 252A.6(1), 252A.2(5), 252A.5(5). Public counsel has a duty to initiate and maintain actions for petitioners under both statutes, but no prohibition of private actions appears, §§ 675.19, 252A.7. Paternity can be determined in either proceeding, *Greenstreet* v. *Clark,* 239 N.W.2d 143 (Iowa 1976), and ongoing support payments may be ordered under either statute, §§ 675.24, 675.25, 252A.6(11) and (12).

As noted by appellant, a jury trial is available, upon demand, in a Chapter 675 proceeding, § 675.18, but, as with other Iowa equity proceedings, is not available in a 252A proceedings, *Greenstreet* v. *Clark, supra.* Certain other differences may be noted. Venue in a 252A proceeding is in the county of a dependent's residence or domicile, § 252A.6(1), but a Chapter 675 proceeding also may be brought where the defendant resides, § 675.10. Chapter 675 authorizes lis pendens, § 675.16; 252A does not. Chapter 675 merely authorizes the court to order "support" and birth expenses, §§ 675.24, 675.26, whereas § 252A.4(2) specifies in detail that a court may order sufficient sums for necessary food, clothing, shelter, care, medical or hospital expenses, expenses of confinement (birth), education expenses, funeral expenses and other reasonable and proper expenses, § 252A.4(2). Under Chapter 675, past support can be recovered for only two years prior to filing of the petition unless a previous written demand has been made, § 675.3. Past support dating back to the birth of the child may be awarded in a 252A proceeding, *Foreman* v. *Wilcox,* 305 N.W.2d 703 (Iowa 1981). Unless the defendant has previously acknowledged paternity in

writing or furnished support, Chapter 675 bars an action brought more than two years after the birth of the child, § 675.33. No statute of limitations is applicable to a 252A proceeding, *Sterns* v. *Kean,* 303 N.W.2d 408 (Iowa 1981); *State ex rel. Andrew* v. *Cardella,* 282 N.W.2d 117 (Iowa 1979). Iowa's long-arm statute may be invoked in a Chapter 675 proceeding, *Larsen* v. *Scholl,* 296 N.W.2d 785 (Iowa 1980), but may not be available in a 252A proceeding because URESA contemplates proceedings against a nonresident in his home state, § 252A.6. While in many cases these differences are unlikely to be of crucial significance, it is plainly too facile to characterize, as does appellant, these two statutory remedies as "functional equivalents".

ARGUMENT

I. The Interlocutory Ruling By The Supreme Court Of Iowa Is Not A "Final" Judgment Or Decree Within The Meaning Of 28 U.S.C. § 1257.

Jurisdiction to review decisions of state courts has been conferred by Congress upon this Court only over "final judgments or decrees rendered by the highest court of a State in which a decision could be had. . . ." 28 U.S.C. § 1257. Iowa does not dispute that its highest court, the Supreme Court of Iowa, has ruled that the failure to provide appellant a jury trial in a paternity proceeding does not violate the Equal Protection Clause of the Fourteenth Amendment. But Iowa does contend that this ruling, coming as it did in the context of a discretionary interlocutory appeal sought by appellant[1], is not embodied in a "*final* judgment or decree."

As a general rule, this Court has held that a state court judgment must "be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final work of a final court." *Market Street R. Co.*, v. *Railroad Commission*, 324 U.S. 548, 551 (1945). See also R. Stern & E. Gressman, *Supreme Court Practice*, § 3.7 (5th ed. 1978). To be appealable, a judgment "should be final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved." *Collins* v. *Miller*, 252 U.S. 364, 370 (1920).

In this case, the rulings to date have involved only the most preliminary question of the mode of trial. Only a petition seeking a declaration of paternity and an order of child support, an answer denying paternity, a jury demand and a resistance

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[1] The appeal to the Supreme Court of Iowa was taken pursuant to Rule 2, Iowa R. App. Pro., which is set forth in full as an Appendix to this Motion.

thereto are on file. No discovery has been pursued; no blood tests have been taken. In short, all factual issues and whatever legal questions may emerge, including possibly additional federal questions, are yet to be developed below.

Appellant urges this Court, however, to place this case in the "penumbral area" of the concept of finality in which intermediate rulings of a state's highest court may be reviewed. *North Dakota Pharmacy Board* v. *Snyder's Stores,* 414 U.S. 156, 160 (1973). Specifically, appellant notes the four exceptions to the general rule catalogued in *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469, 476-487 (1975). Appellant invokes only the fourth exception:

> Lastly, there are those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on non-federal grounds, thus rendering unnecessary review of the federal issue by this Court, *and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action* rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. *In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue,* which itself has been finally determined by the state courts for purposes of the state litigation. (Emphasis added.)

420 U.S. at 482-83.

In *Cox,* this Court cited, *inter alia, Mercantile National Bank* v. *Langdeau,* 371 U.S. 555 (1963), as an example of an application of the fourth exception. Appellant attempts to analogize to *Langdeau,* in which two national banks were sued in Travis County, Texas, but claimed that under a special federal venue

statute they could properly be sued only in Dallas County. This Court found finality, noting that it would be preferable:

> to determine now in which state court appellants may be tried rather than to subject them . . . to long and complex litigation which may all be for naught if considerations of the preliminary question of venue is postponed until the conclusion of the proceedings.

371 U.S. at 558.

Appellant seizes this language out of context and urges in effect that the *Cox* "fourth exception" may be invoked whenever it would avoid subjecting an appellant to "needless, time consuming and costly litigation." Jurisdictional Statement at 3. Of course, that would be true whenever review of an interlocutory order is sought and the "exception" would quickly eliminate the rule.

Appellant chooses to ignore the two essential elements of the *Cox* fourth exception: 1) reversal of the state court would *terminate* the litigation under review and 2) refusal to review would seriously erode federal policy. Neither element is present here. Reversal of the Supreme Court of Iowa would only alter the mode of trial, not terminate the lawsuit.[2]

Nor is there here any overriding federal policy in need of early vindication. As noted in Division II, there is no general constitutional right to a jury trial in a civil paternity proceeding. And, although Iowa argues below that appellant's equal protection claim is wholly insubstantial, even were it to prevail, it would

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[2] In *Langdeau,* this Court's ruling *terminated* the pending Travis County litigation. Appellant also relies upon *American Motorist Ins. Co.* v. *Starnes,* 425 U.S. 637 (1976). There, this Court found finality without discussion by reference to *Langdeau,* 425 U.S. at 642 n. 3. There, this Court affirmed the venue ruling below, but had it reversed the pending litigation would have been terminated there as well.

result at most in requiring only the State of Iowa to afford jury trials in paternity cases. Other states with different statutory schemes would not be affected by a reversal of this decision. This context, then, is very different from a context in which Congress has seen fit to protect national banks from litigation in a multiplicity of forums (*Langdeau*) or a context in which an unsettled question of freedom of the press under the First Amendment could harm the operation of a free press [*Cox* and *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974)].

On the other hand, premature review would jeopardize the policies which are served by the finality requirement, as articulated in *North Dakota Pharmacy Board, supra*, 414 U.S. at 159:

> (1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in case where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs.

If this Court grants immediate review and other federal questions emerge in the ensuing trial, bench or jury, this case could possibly be reviewed "piecemeal". However, if this appeal is dismissed and appellant prevails in a bench trial, the mode of trial issue will become moot and no real case or controversy will remain. If the appellant loses in a bench trial, appellant's equal protection claim may be reviewed later, along with any other federal questions which may emerge.

Moreover, immediate review would trench upon state concerns in at least two important respects. First, the determination of a child's familial status will suffer a further substantial delay and an alleged obligation to support the child will remain unfulfilled pending the determination of this collateral issue. Second, the extraneous factor of the additional delay associated

with an appeal to this Court may be introduced into the discretionary decisions of state appellate courts to grant interlocutory review of federal questions. The trial court's decision rejecting the jury demand clearly could not be appealed directly to this Court and a denial of interlocutory review here would have plainly precluded this appeal. Introduction of such a skewing factor may not only confound the delicate weighing involved in this exercise of discretion, but also may, given the limited number of federal questions which this Court can review as a practical matter, run contrary to the federal interest in serious and timely review of federal questions by state appellate courts. Erosion of the finality requirement to the extent requested by appellant would undermine "an important factor in the smooth working of our federal system." *Radio Station WOW* v. *Johnson,* 326 U.S. 120, 124 (1945). This appeal should be dismissed for lack of finality.

II. Appellant's Equal Protection Claim Does Not, On This Record, Present A Substantial Federal Question.

In its current posture, this case does not present a ripe equal protection issue. Appellant can identify no *classifications* relating to the mode of trial in paternity proceedings on the *face* of the "statutory scheme" in question. Appellant has made neither allegation nor offer of proof that the statutes have been administered in a manner that creates a *de facto* classification disadvantageous to him relating to the "benefit" of jury trial. In this posture, appellant has merely disguised an insubstantial Fourteenth Amendment Due Process/Seventh Amendment claim to a right to jury trial in equal protection garb. In this posture, the appeal should be dismissed for want of a substantial federal question.

The conceptual flaw in appellant's equal protection claim is immediately apparent from its formulation:

> The dual statutory scheme creates two classes of putative fathers: one prosecuted under Chapter 252A and the other under Chapter 675. These two classes are composed of similarly situated persons who are treated differently in that the class of putative fathers prosecuted under 252A is denied the opportunity to obtain a jury trial on the issue of paternity.

Jurisdictional Statement at 7.

Iowa neither disputes nor apologizes for the fact that both Chapters 252A and 675, Iowa Code (1981), provide remedies for determining disputed questions of paternity and child support obligations and that a petitioner could pursue most putative fathers under either remedy, one of which is at law and the other of which is in equity.

The purpose of these statutes establishes a universe of concern which includes all putative fathers. But there is no classification on the face of these statutes which divides putative fathers into *classes* based upon some distinguishing trait for purposes of allocating the "benefit" (or "burden") of a jury mode of trial. The statute does not seize upon race, religion, national origin, citizenship, age, indigency, residence or any other trait, "suspect" or otherwise, as a basis for specifying that some putative fathers will be afforded a jury trial and others not. The Iowa Legislature simply did not speak to the question; putative fathers were not legislatively classified.

It is, of course, hornbook law that the focus of equal protection doctrine is upon the reasonableness of legislative classifications employed to distribute "burdens" and "benefits", not upon whether the legislature must afford a "benefit". J. Nowak, et al., *Constitutional Law* at 517-22 (West 1978). See also Tussman and ten Broek, *The Equal Protection of the Laws,* 37 Calif.L.Rev. 341 (1949). Here, for purposes of equal protection analysis, the opportunity for a jury trial is the

"benefit" to be distributed, not the "classifying trait". There is no such classifying trait in the legislation and the "statutory scheme" is simply not subject to the facial challenge suggested by appellant.

Iowa does not contend, of course, that only legislative classifications are subject to equal protection challenge. Some statutes vest a range of discretion in executive officials to distribute benefits or burdens. It has been settled law since *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886), that if a facially neutral law is administered with "an evil eye and an unequal hand", i.e. if state officials employ invidious or otherwise irrational criteria, a "de facto" equal protection challenge may be brought to redress the unequal *application* of the statute. To the extent that state officials are involved in choosing whether to proceed under Chapter 252A rather than Chapter 675, a *Yick Wo* challenge would be available here. But appellant has made neither allegation nor offer of proof that the statutes have been unconstitutionally applied to him. Indeed, for all that appears on this record, no putative fathers have been afforded a jury trial in paternity proceedings and there simply has been no administrative classification developed.[3]

The above analysis should make clear why appellant's reliance on *Baxstrom* v. *Herold,* 383 U.S. 107 (1966), and *Humphrey* v. *Cady,* 405 U.S. 504 (1972), is misplaced. In *Baxstrom,* this Court addressed New York procedures for the involuntary commitment of the mentally ill. Persons at liberty were afforded

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[3] This office would be ethically uncomfortable stressing this point to the Court if we had reason to believe that appellant was part of a group that had been singled out for denial of a jury trial. As a matter of professional statement to this Court, it is our understanding that, at least since 1977, when the State of Iowa undertook a major effort to enforce child support obligations, the overwhelming majority of paternity suits have been brought pursuant to Chapter 252A and, therefore, nearly all such actions have been tried to the court.

a jury determination of incompetency and a judicial determination that they were dangerously mentally ill. Persons such as Baxtrom who were civilly committed subsequent to confinement in prison were not afforded these procedural safeguards. The New York statutes plainly included facial classifications subject to equal protection challenge. The universe of concern was putative dangerously mentally ill persons. The "benefits" were the procedural safeguards and the "classifying trait" was confinement in a penal institution. This Court held that trait unrelated to the purpose of the statutes affording the procedural safeguards.

In *Humphrey*, this Court addressed only whether petitioner was entitled to a habeas corpus hearing rather than the merits of his claim, but found substantial his allegation that a Wisconsin statutory scheme was analagous to that condemned in *Baxstrom*. Wisconsin permitted persons convicted of certain crimes to be indefinitely committed to a "sex deviate facility" upon a finding by the court that the person was "probably motivated by a desire for sexual excitement". Other persons civilly committed were entitled to a jury determination of competency prior to commitment. This court held Humphrey was entitled to show that the finding concerning sexual excitement was not a rational trait for classifying the mentally ill for purposes of distributing the "benefit" of a jury determination of competency. In both *Baxstrom* and *Humphrey*, the statutes involved, unlike the statutes involved here, contained legislative classifications subject to a facial equal protection attack.

Added perspective on the nature of appellant's claim may be gained from comparative analysis. The two Iowa statutes in question, fairly evaluated, provide a plaintiff (including but not limited to the State) in a civil paternity proceeding a *choice of remedies*. Although they are certainly not *identical* (or "functionally equivalent") other than with respect to mode of trial, there is certainly a large area of overlap concerning substantive law, factual issues and procedure in the two statutory paternity

proceedings. But this is scarcely unique to paternity proceedings. From the earliest days of English law to the present, plaintiffs frequently have a choice of remedies. A plaintiff often may seek damages in an action at law or proceed in equity for specific performance to redress identical conduct by a defendant.[4] Similarly, a plaintiff may prefer the equitable quiet title action to an action at law for ejectment, although the underlying grievance is the same. Numerous modern statutes provide plaintiffs, including the government, with a wide choice of remedies. Private plaintiffs may seek injuctive relief in equity or an action at law for damages for violations of the Sherman Act. Other examples are virtually unlimited. Doubtless tactical considerations concerning the mode of trial frequently bear upon the choice of remedy pursued.[5] Standing alone, this has never been thought to raise concerns of constitutional dimension:

> It is insisted that the Arizona system deprives employers of property without due process of law and denies them equal protection because it confers upon the employee a free choice among several remedies.
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> . . .

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[4] The same example was employed by this Court in *Atlas Roofing Co.* v. *Occupational Health and Safety Comm'n*, 430 U.S. 442, 459 (1977), in explaining that it is the relief sought rather than the presence of factual issues which determines the applicability of the Seventh Amendment right to jury trial.

[5] Candor also compels this office to acknowledge that child support recovery attorneys (assistant attorneys general and assistant county attorneys) will generally regard a jury trail as tactically disadvantageous. Child support recovery attorneys maintain a high volume caseload and prompt resolution of disputed claims receives a high priority. Crowded jury dockets in urban areas result in delayed dispositions of jury cases and jury trials require significantly more trial time. Moreover, many child support recovery attorneys are recent law school graduates with little trial experience, much less jury trial experience, who would be at a greater disadvantage against experienced counsel in a jury case.

> But it is thoroughly settled by our previous decisions that a state may abolish contributory negligence as a defense; and election of remedies is an option very frequently given by the law to a person entitled to an action, — an option normally exercised to his own advantage, as a matter of course.

Arizona Employer's Liability Cases, 250 U.S. 400, 431 (1918).[4]

Although Iowa would not dispute that its agents may be subject to a *Yick Wo* challenge if they elect remedies based upon invidious criteria, it will surely work a revolution in American jurisprudence if every "statutory scheme" which affords a choice of remedies becomes subject to a facial equal protection attack.

Appellant's equal protection claim should now be exposed as a disguised Due Process/Seventh Amendment claim to a substantive right to jury trial in civil paternity proceedings. The authorities unanimously reject the application of the Seventh Amendment to state proceedings. See, *e.g., Minneapolis & St. L. R. R.* v. *Bombolis,* 241 U.S. 211, 217 (1916); *Woods* v. *Holy Cross Hospital,* 591 F.2d 1167, 1171 (5th Cir. 1979); *Wartman* v. *Branch 7, Milwaukee County Court,* 510 F.2d 130, 134 (7th Cir. 1975). Even if applicable to the states, the Seventh Amendment does not require a jury trial in a proceeding to enforce statutory rights. *Atlas Roofing Co., supra,* 430 U.S. at 454. Moreover, the state cases generally hold that there is no inherent constitutional right to a jury trial in bastardy proceedings. *Anno.,* 94 A.L.R.2d 1126, 1130 (1962).

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[4] The Supreme Court of Utah relied upon this doctrine in rejecting an equal protection attack upon procedural differences in two Utah statutes providing remedies for support of illegitimate children. *State* v. *Judd,* 493 P.2d 604 (Utah 1973).

The Due Process Clause plainly entitles a putative father to an "accurate" determination of paternity. *Little* v. *Streator*, 49 U.S.L.W. 4581 (June 1, 1981). While a jury possesses unique advantages as the "conscience of the community", cf. *Humphrey* v. *Cady, supra*, 405 U.S. at 509, those advantages seem of little relevance here and, in any case, it would appear odd to suggest that a jury is better situated than a trial judge to make an "accurate" determination of paternity. However that may be, appellant has chosen not to make that claim. Because the equal protection claim he does make is plainly insubstantial, his appeal should be dismissed.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

Rule 2, Iowa Rules of Appellate Procedure

(a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after service of the application and hearing as provided in rules 22 and 30, rules of appellate procedure, on finding that such ruling or decision involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 1, rules of appellate procedure, from a final adjudication in the trial court under R.C.P. 86.

(b) The order granting such an appeal may be on terms advancing it for prompt submission. It shall stay further proceedings below and may require bond.